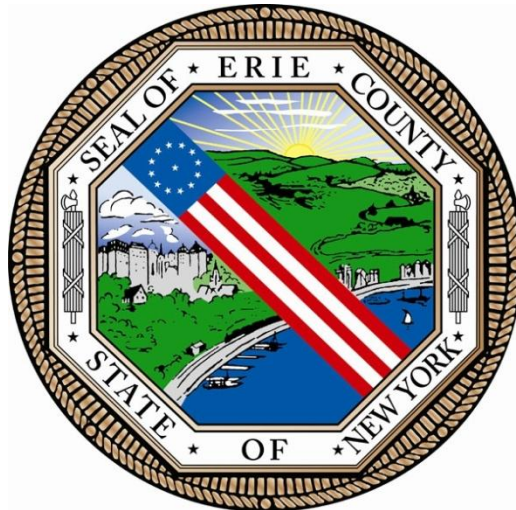


**JUNE 2014**

**INVESTIGATION OF  
ERIE COUNTY DIVISION OF WEIGHTS AND MEASURES  
FOR THE PERIOD  
JANUARY 1, 2014 THROUGH APRIL 1, 2014**



**HON. STEFAN I. MYCHAJLIW**

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June 5, 2014

The Honorable  
Erie County Legislature  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

Dear Honorable Members:

During the months of March and April 2014, the Erie County Comptroller's Office received multiple telephone calls to the Erie County Whistleblower Hotline (Hotline)<sup>1</sup> from employees of the Division of Weights and Measures (W&M) as well as external sources. These individuals alleged several improprieties within Weights and Measures including improperly conducting field inspections, issuing unjust fines, the storage of the Director's personal vehicle for the winter, county employees performing maintenance and work on the privately stored, personal vehicle during the work day, smoking on Erie County property where highly flammable liquids like gasoline are stored, and poor inventory tracking with potential theft. The individuals who called the Hotline felt that these actions were improper and could be deemed theft and fraud by County employees.

Our investigation covered a period of the most recent four months to perform our investigation and substantiate the claims made by the whistleblowers. The report that follows represents the results of our investigation into the Hotline allegations. Our investigation was conducted through interviews with Weights and Measures management and employees, testing of work performed in the field, and physical inventory testing.

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<sup>1</sup> Audit investigates allegations of waste, fraud, and abuse within Erie County through the Hotline. The Hotline can be reached by telephone (716-858-7722), email ([whistleblower@erie.gov](mailto:whistleblower@erie.gov)), or Internet (<http://www2.erie.gov/comptroller/index.php?q=report-waste-fraud-or-abuse>).

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## Background

The Division of Weights and Measures (W&M) operates within the Department of Public Works (DPW). This Division is overseen at the State level by the Department of Agriculture and Markets. W&M is tasked with assuring that all devices used commercially within the county are accurate and are constructed in a manner to prevent fraud. It is also responsible for compliance with the local item pricing/scanner accuracy law. This law requires that consumers know and pay the lowest of any advertised price.

The Division of Weights and Measures inspects tests and certifies the accuracy of all commercial weighing and measuring devices, including gasoline and other fuel pumps or meters in Erie County. It is responsible for enforcing all applicable laws, rules, regulations and ordinances prescribed by the New York State Department of Agriculture and Markets and the County of Erie. It ensures that buyers and sellers of commodities base their transactions upon accurate weights, measures or counts by confirming the accuracy and the proper usage of all commercial devices.

W&M receives revenue from civil penalties assessed for violations of the New York State Agriculture and Markets law and local legislation. A user fee system was enacted in 1989 to help defray this Division's cost to the taxpayers. In 1997, this Division joined forces with New York State's Weights and Measures to test the octane of petroleum products within our county. The cost of this program is fully reimbursed by the State.

On several occasions between April 18th and 22<sup>nd</sup>, multiple individuals contacted the Erie County Comptroller's Office with concerns about several perceived improprieties within Weights and Measures. These allegations include:

- 1) Improper and incomplete field inspections/testing, that led to clients being fined, by Weights and Measures;
- 2) The Director of Weights and Measures misusing public property by storing his personal classic car in the Weights and Measures Garage for an extended period of time during the winter and staff working on his inoperable car during the work day;
- 3) Numerous staff members of Weights and Measures violating County Policy by smoking on County property near highly flammable liquids like gasoline;
- 4) Improper inventory tracking allowing for potential theft.

On April 23<sup>rd</sup>, the Division of Audit within the Erie County Comptroller's Office issued an engagement letter to DPW regarding their intention to investigate these allegations. That same day a meeting was held with John C. Loffredo, Commissioner of the Erie County Department of Public Works and subpoenas were served to employees within Weights and Measures. The purpose of those subpoenas was to obtain documents and records as well as advise the Weights and Measures staff that they were all required to appear to testify under oath at a hearing on April 28, 2014 at the Comptroller's Office.

Testing on the documents and information obtained was performed starting April 23<sup>rd</sup>, and hearings were held the morning of April 29, 2014. The hearings were conducted by Associate Deputy Comptroller Bryan Fiume, and attended by Christopher Musialowski - Deputy Comptroller for Audit, Jeremy Toth - Second Assistant County Attorney, Kevin Kumor and Denise Szymura – CSEA representatives. Testimony was recorded by the Office of the Comptroller, as well as the County Attorney.

## Results of Investigation

### 1) Improper Field Testing, Fraudulent Reporting, Issuing Improper Fines

The most serious allegation made regarding the conduct of the Division of Weights and Measures involves the procedures for how employees conduct field testing, and how management responds to the results of the tests. It was alleged that management is assigning fines to businesses based on testing that was never completed. It was further alleged that the Division Director then falsifies paperwork that is sent to New York State in order to verify that the additional testing required to fine a client was actually conducted.

To confirm the allegation, our auditors first had to fully explore and understand the process that takes place during field inspections. It is our understanding that employees routinely visit grocery stores, markets and convenient stores to perform field tests to ensure the products they are selling meet the weight and measurement quantities identified on their packaging. In order provide this verification, Erie County Weights and Measures employees measure the contents of packages and test onsite scales for accuracy.

New York State's Department of Agriculture and Markets has adopted federal standards as their guidelines, and uses the National Institute of Standards and Technology (NIST) Handbook 113. These guidelines establish the protocol for Weights and Measures field testing. (Please see Appendix II for a copy of these Guidelines)

Testing of this sort can include measuring products created and sold in the store, such as meat products from a deli or butcher or products that are packaged elsewhere at a manufacturer, like cereal. Testing guidelines are designed to determine whether or not the seller or the manufacturers are at fault if a product fails its field test.

Weights and Measures employees conduct two types of tests in the field, in stores and places of business. One is a less rigorous inspection called an "Audit Test" that is categorized by the Division of Weights and Measures in their records as a WM-57. According to the NIST Handbook 113, the Audit Testing as performed in the WM-57 is considered to be minimal "spot checks" using "smaller sample sizes," but **is not sufficient to take enforcement action.**

The NIST Handbook 113 explains that these types of test results **cannot lead to fines:**

*“May audit tests and other shortcuts be used to identify potentially volatile lots?”*

Shortcuts may be used to speed the process of detecting possible net content violations. These audit procedures may include the following: using smaller sample sizes, spot checks using tare lists provided by manufacturers, selecting samples without collecting a random sample. These and other shortcuts allow spot checking of more products than is possible with the more structured techniques, **but do not take the place of Category A or B testing.**”

*Source: The NIST Handbook 113*

To reiterate that point, audit tests, referred to as WM-57 by the Division of Weights and Measures, the less rigorous test, cannot take the place of or be substituted for an official test, which is categorized by the Division of Weights and Measures in their records as a WM-58:

“These and other shortcuts allow spot checking of more products than is possible with the more structured techniques, but **do not take the place of Category A or B testing.**”

*Source: The NIST Handbook 113*

The NIST Handbook 113 confirms that fines cannot be administered based on audit tests or less stringent inspections:

*“Can audit tests and other shortcuts be used to take enforcement action?”*

**“No. Do not take enforcement action using audit test results.”**

*Source: The NIST Handbook 113*

The Director of Weights and Measures confirmed this fact during his interview, that fines cannot be given to stores based on a simple audit test in the field (WM-57):

**Weights and Measures Director:** “The only way I can fine, the only way I can fail a lot, is an official test.”

The “Audit Test,” or WM-57 inspection testing includes opening packages, weighing the contents, and if the packages fail by more than the acceptable limit, either high or low, the batch fails.

If a batch fails, then it is recommended, based on New York State and federal standards, that Weights and Measures inspectors conduct a more thorough and longer inspection to determine if there is a problem with one box at one store or if there is a much larger issue at the manufacturer level. This test is an “Official Test” and is categorized by the Division of Weights and Measures in their records as a WM-58.

**Employee #6:** “That (WM-58) is what’s called an ‘official test.’ And in that test you have to take at least two packages, you have to destroy the packages, so you can establish what the weight of all the packaging is, that’s called ‘tare weight.’ Then, once you’ve established what the average ‘tare weight’ between what those two packages are, then you go to a random number selection and you would take, of the lot, you would take maybe the third, then whatever random number sequence would be. Maybe the 11<sup>th</sup>. Maybe the 21<sup>st</sup>. Maybe the 28<sup>th</sup>. Whatever the random number is, that is the one you would take, and sample those, and test them to see that they are accurate.”

An “official test” or WM-58 could entail inspectors trying to pinpoint the source of a product at the manufacturer level, and then determine if the lot of defective products was sent to multiple stores or even to multiple cities.”

**Weights and Measures Director:** “Where did this lot end up going? It may be all in one store, it may be across five stores. It may be ten. We don’t do that. We won’t do that. It takes too long and it’s a waste of time...We decided at that point, after talking with other Directors is, it’s almost insane to try to do that.

The Director of Weights and Measures stated that he spoke to other Directors of Weights and Measures across New York State about the stringent measures needed to complete an “official test” in order to place fines at stores:

**Weights and Measures Director:** “When I took it to the other Directors, because we all talk, I say ‘what are you doing about Category A (more detailed inspections)? Most said ‘All we’re going to do is fail lots because of the MAV (Maximum Allowable Variance).’ I figure that’s the best way to go about it.”

“All I’m failing them for is exceeding the MAV (Maximum Allowable Variance). That’s why we don’t go through that. Yeah. You have to go through this long formula, and then it still comes down to you have to check the whole lot. It’s a waste of time. Ask any other Director. You’re not going to track down that whole lot because it’s next to impossible. So, I’m taking it and just failing them ‘officially’ because it’s the only way I can.”

Weights and Measures Inspectors confirmed in their interviews that they do not conduct the thorough and rigorous inspections that lead to fines, as established by the national standards adopted by the New York State Department of Agriculture and Markets:

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Comptroller’s Office Question: “How often do you do official testing?”

**Weights and Measures Employee #2:** I do not do official testing.”

Question: “Ever?”

**Weights and Measures Employee #2:** "I haven't done official testing in probably eight years. Maybe eight years ago."

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Comptroller's Office Question: "If you go back to the main form...it says the 'official test.'"

**Weights and Measures Employee #3:** "We don't do those."

Question: "You've never done those?"

**Employee #3:** "I've never done an official test."

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Comptroller's Office Question: "Have you ever conducted one (an official test)?"

**Weights and Measures Employee #4:** "Back in the day."

Question: "...If you did it 'back in the day' what is it?"

**Employee #4:** "We're talking about 20 years ago."

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Question: "You said, not to hold it to you, but you've said you haven't done one (an official test) in approximately 20 years?"

**Employee #4:** "When we were taught it, yeah."

Question: "It's not something you regularly do?"

**Employee #4:** "No."

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Comptroller's Office Question: "Can you confirm you did not perform any 'official tests?'"

**Weights and Measures Employee #6:** "I can confirm, I don't even have to look. We used to do those. But we don't do those any more."

Question: "Looking at your tracking of the management sheets, did you perform, in the month of January (2014), 3,106 tests (inspections) on packages?"

**Employee #6:** "No I haven't done any."

Question: "In the month of February (2014), did you perform 1,784 official tests?"

**Employee #6:** "No."

Question: "In the month of March (2014), did you perform 2,183 official tests?"

**Employee #6:** "No."

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During our interviews we provided employees copies of their field reports to verify their accuracy. The reports were obtained by our staff from the Director. The field reports were specific to audit tests and official tests. The five employees who perform these tests all verified



the accuracy of their field reports. The Director also affirmed their accuracy. (For A Sample of these Documents please see Appendix I)

Based on our interview with the Director, it appears that Weights and Measures inspectors in Erie County, and potentially across New York State find it too difficult and time consuming to conduct “official tests” on packages. The very serious concern is that the federal guidelines, which have been adopted by the New York State Department of Agriculture and Markets, are not being followed properly in order to levy fines to businesses. It appears that in Erie County the Director of Weights and Measures uses the less rigorous “audit test,” the WM-57, then arbitrarily decides on his own, referencing the “audit test,” to levy fines. This would not be in compliance with federal guidelines:

**WEIGHTS AND MEASURES DIRECTOR:** “There is only one way to fine on these commodities. We can either track down these lots, look at Kellogg’s Corn Flakes. You have to look at the package find out what the lot is to do Category A (the rigorous inspection) and the 58 you would have to track that lot down. You find what you have at Tops, Tops may have 15 stores that that same lot is at, they may be in Pennsylvania, Cleveland whatever. We decided at that point, after talking with other Directors that it’s almost insane to try to do that.”

*“Can audit tests and other shortcuts be used to take enforcement action?”*

**“No. Do not take enforcement action using audit test results.”**

*Source: The NIST Handbook 113*

According to all five Weights and Measures employees that conduct testing in the field, they have never performed an official test referred to in Erie County as a “WM-58.”

Based on the information provided to the Comptroller’s Office and the interviews conducted, the Comptroller’s Office has determined that the Division of Weights and Measures is out of compliance with the NIST Handbook 113. As a result of being out of compliance with these regulations, we have not met the appropriate criteria for issuing fines.

Furthermore, it appears that Weights and Measures has been submitting fraudulent records to the New York State Department of Agriculture and Markets that clearly indicate that our employees have been performing “WM-58,” or “official tests,” when employees have confirmed to us, under oath, that they have not.

The Director of Weights and Measures confirmed in his interview that he simply takes a completed “WM-57” or “audit test” and makes a personal judgment decision to declare whether a business failed a “WM-58” or “official test.” This personal judgment then leads to a fine, which our office believes is not proper.

During the Director's interview, he stated that he believes this practice could be happening statewide. This is very concerning and should be explored further by the New York State Comptroller.

**"WEIGHTS AND MEASURES DIRECTOR:** "We decided at that point, after talking with other Directors (across New York State) that it's almost insane to try to do that (conduct official tests in the field)."

**WE RECOMMEND** that the New York State Comptroller review our findings and conduct a similar investigation into statewide county compliance with NIST regulations, relating to Divisions of Weights and Measures, to determine if an epidemic of improperly fining businesses for failure to comply without proper proof exists.

**WE FURTHER RECOMMEND** that if the State Comptroller conducts an investigation and agrees that we have fined businesses improperly, that those businesses be refunded immediately.

## 2) Storing a Personal Vehicle on County Property for over Four Months

During an interview in the Office of Erie County Comptroller on April 29<sup>th</sup>, 2014, the Erie County Director of Weights and Measures confirmed his private vehicle, a classic car, was delivered by someone else to the county owned and operated garage at the Weights and Measures facility, where it sat for an extended period of time:

Comptroller's Office Question: "You had the car delivered to the garage?"

**Weights and Measures Director: "Yes."**

Question: "Why?"

**Director: "Because I live in Hamburg. The 'guy' said it would be easier to deliver it there. So, I figured I'd have it delivered there, get a license plate, and take it home."**

Question: "So it did not arrive in working condition?"

**Director: "No. It rolled when it got there, but then the front wheel completely locked up."**

Question: "How long was the car in the garage?"

**Director: "I think it was December 15<sup>th</sup> that the delivery was made and I just got it out of there permanently within the past week. (Interview took place on 4/29/14)"**

All ten employees interviewed, including the Director himself, verified that the Director stored his personal vehicle, a 1966 Buick Riviera, in the County Garage at Weights and Measures for a period of approximately four months.

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Comptroller's Office Question: "For the record, I am going to hand (NAME REDACTED) a photograph of a 1966 maroon Buick Riviera. (NAME REDACTED) do you recognize that the vehicle in that photograph is in a county garage?"

**Weights and Measures Employee #1: "Yes."**

Question: "Is that a Weights and Measures garage?"

**Employee #1: "Yes."**

Question: "Can you identify who owns the vehicle?"

**Employee #1: (NAMES THE DIRECTOR OF WEIGHTS AND MEASURES)**

Question: "Approximately how long would you say that the vehicle was there?"

**Employee #1: "Until a couple weeks ago (Interview took place on 4/29/14)"**

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Comptroller's Office Question: "For the record, I'm handing (NAME REDACTED) a photo, it is of a 1966 maroon Buick Riviera. (NAME REDACTED) will you take a look at that and tell me if you recognize that vehicle as being parked in the Erie County garage?"

**Weights and Measures Employee #2: "It was."**

Question: "Do you recognize the vehicle?"

**Employee #2: "I do."**

Question: "Can you state who owns the vehicle?"

**Employee: "My boss, (NAMES THE DIRECTOR OF WEIGHTS AND MEASURES)."**

Question: "To the best of your recollection, when did you first notice the vehicle in the county garage?"

**Employee #2: "I don't know, winter-time, sometime. First of the year, maybe that era."**

Question: "Do you know about how long the vehicle was in that garage?"

**Employee #2: "I know it couldn't move because the wheel was locked. So, it sat there with a frozen wheel."**

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Comptroller's Office Question: "For the record, I'm providing you a photo of a 1966 maroon Buick Riviera. Do you recognize that vehicle as being in the Weights and Measures garage?"

**Weights and Measures Employee #3: "Yes."**

Question: "Do you know who the owner of that vehicle is?"

**Employee #3: "I believe the Director (NAMES THE DIRECTOR OF WEIGHTS AND MEASURES), that's (NAMES THE DIRECTOR OF WEIGHTS AND MEASURES) car."**

Question: "To the best of your recollection, when did that vehicle first appear in the county Weights and Measures garage?"

**Employee #3: "Maybe December. Or January, maybe. Well, December of 2013 or January 2014. Around there."**

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Comptroller's Office Question: "First question I have, and I'm presenting you with a photo for the record, of a 1966 Buick Riviera. Do you recognize the car as being parked in the Weights and Measures garage?"

**Weights and Measures Employee #4: "Yes."**

Question: "When did you, as an employee, first notice that car in the garage?"

**Employee #4: "I think it was December."**

Question: "And how long, about, was it there?"

**Employee #4: "A couple of months, maybe."**

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Comptroller's Office Question: "I'm going to hand you a picture, and the picture for the record is of a 1966 maroon Buick Riviera. I'm going to ask you a series of questions about it. Do you recognize that vehicle as being in the county Weights and Measures garage?"

**Weights and Measures Employee #5: "I do."**

Question: "To the best of your recollection, when did you first notice that vehicle in the county garage?"

**Employee #5: "I'm going to say late last year. Early this year. I can't put an exact date on it."**

Question: "Do you have or did you have any concerns about a private vehicle being stored on county property?"

**Employee #5: "I did."**

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Comptroller's Office Question: "To the best of your recollection, when did you first notice this vehicle sitting in the garage?"

**Weights and Measures Employee #6: "Probably a little after Christmas-time."**

Question: "Can you identify the owner of the vehicle?"

**Employee #6: "That would be the Director, (NAMES DIRECTOR OF WEIGHTS AND MEASURES)."**

Question: "Can you confirm this is in the county garage?"

**Employee #6: "Yes. That is in the county garage."**

Question: "Did you have any concerns, and what were they, about a private vehicle being stored on county property?"

**Employee #6: "Yeah. Yes I did."**

Question: "What were those concerns?"

**Employee #6: "I thought it was improper, against the Director."**

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Comptroller's Office Question: "To the best of your recollection, when did you first notice this vehicle sitting in the county garage?"

**Weights and Measures Employee #7: "It was late last year."**

Question: "Do you recognize that as the county garage?"

**Employee #7: "I do, yes."**

Question: "Can you identify the owner of the vehicle?"

**Employee #7: "Yes."**

Question: "Who is the owner?"

**Employee: "(NAMES DIRECTOR OF WEIGHTS AND MEASURES)."**

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Comptroller's Office Question: "To the best of your recollection, when did you first notice this vehicle sitting in the Weights and Measures garage?"

**Weights and Measures Employee #8: "Probably I would say, maybe, last fall."**

Question: Can you confirm this is the Weight's and Measures garage?

**Employee #8: "Yes that is."**

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Comptroller's Office Question: "How long was it in the garage?"

**Weights and Measures Employee #9: "About two months."**

The time period in question spans December 15, 2014 through April 25, 2014. (Please see Appendix III for a picture of the car in the County garage.)

The Comptroller's Office performed research into vehicle storage locations in Erie County. After looking at three, A2Z Self Storage, Lancaster Self Storage, and Uncle Bob's Self Storage, the Comptroller's office determined the average rate for a climate controlled space large enough for a full size vehicle for the winter, 10' X 20', to be \$162 per month or \$648 for the entire period it was stored. (Please see Appendix IV for a copy of the estimates.)

According to testimony of Weights and Measures employees and the Director, the classic car was not in driving condition, and was inoperable because of a frozen right tire.

In addition to storing a personal vehicle on county property for this four-month period, interviews with Weights and Measures employees also confirmed that at least four employees were seen working on the vehicle during the workday. Seven of ten Weights and Measures employees directly addressed the issue of county employees working on the classic car during the work day and the fact that it was impeding work in the Weights and Measures garage:

Comptroller's Office Question: "Did you ever see people involved with the car?"

**Weights and Measures Employee #1: "Probably. Yeah. Sure."**

Question: "Who did you witness working on the car?"

**Employee #1: "Well. Let's see. I'm trying to think. Probably (NAMES DIRECTOR OF WEIGHTS AND MEASURES), (NAME REDACTED), (ANOTHER NAME REDACTED). But I don't think anyone else had anything to do with it."**

QUESTION: "I know you stated you're not a mechanic. But could you describe the type of work they were doing on the car?"

**Employee #1: "There was something. A wheel was stuck. And they were trying to 'unstuck it.' So I guess he could get it out of the garage, is from my understanding. So I know they all took turns trying to get this 'unstuck.'"**

Question: "Can you say, and estimating, how often the car was being worked on? Was this a daily occurrence? A weekly occurrence?"

**Employee #1: "I'm not in the office, so."**

Question: "From your perspective."

**Employee #1: "From my perspective, that occurrence, when they were doing work on the wheel, was maybe a couple days, while they were trying to get it 'unstuck' and that was our down time, around Christmas, from what I remember."**

Question: "So, the office was slow, so they didn't have to do work in the field?"

**Employee #1: "No, we stay in at the end of the year."**

Question: "In the office?"

**Employee #1: "Yes."**

Question: "And they were using that slow, down time, to repair and work on the car?"

**Employee #1: "Well, not only that. But yes."**

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Comptroller's Office Question: "Have you ever expressed to management or anyone about concerns about the car being in a county facility?"

**Weights and Measures Employee #3: "No. I only say that when I try to move my gas can around it, you know, I don't want to hit the car with my gas cans."**

Question: "Understandable."

**Employee #3: "I'd say 'Hey! What's a car doing there?!' You know?"**

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Comptroller's Office Question: "We've received reports that county employees have been working on this car during county time. Did you ever see people working on the car?"

**Weights and Measures Employee #4: "Yeah."**

Question: "Who did you witness working on the car?"

**Employee #4: "Myself. The boss, (NAMES DIRECTOR OF WEIGHTS AND MEASURES). Maybe (NAME REDACTED)."**

Question: "Were you ever asked to work on the car?"

**Employee #4: "No."**

Question: "You offered to help?"

**Employee #4: "Yeah. I found myself in the garage. And yeah."**

Question: "What did you, yourself do, or what did you see being done with the car?"

**Employee #4: "I think I was holding this contraption designed to take a wheel drum off."**

Question: "Like a breaker bar?"

**Employee #4: "This thing was like a claw. With...do you know what a faucet-puller wrench looks like?"**

Question: "I do not."

**Employee #4: "Okay. A faucet-puller wrench was kind of like what we were doing. You stick something in the center and these other things are designed to pry this thing off. Same thing as a faucet. Because those things can get, you put a faucet-puller in the middle of where a screw usually goes, and it has a claw on there. And you kind of just crank it up on a piece of all-thread, and it just pops off."**

Question: "Right. Creates the tension."

**Employee #4: "Yeah. That's it."**

Question: "Were they working to free a tire that was locked?"

**Employee #4: "Well, the tire was off."**

Question: "So what were they doing specifically that you witnessed?"

**Employee #4: "Trying to get the drum off, that was frozen on."**

-----  
Comptroller's Office Question: "Did you ever specifically witness the car having a locked tire?"

**Weights and Measures Employee #5: "Yes."**

Question: "Did you ever see staff working on it (the frozen tire) to free it up?"

**Employee #5: "There was that five minute thing I was telling you about. (NAMES DIRECTOR OF WEIGHTS AND MEASURES) had asked me to hold a wrench. I just volunteered. He didn't even ask me. I just went in. And I know a lot about vehicles. So when it was stuck I was on my way out. We were going to lunch and I stopped to hold the wrench."**

Question: "Who else was working on the car?"

**Employee #5: "Just (NAMES DIRECTOR OF WEIGHTS AND MEASURES) at the time."**

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Comptroller's Office Question: "We have reports that county employees worked on this car during county time. Did you ever see people conducting work on this car?"

**Weights and Measures Employee #6: "Yes."**

Question: "Were those people on county time?"

**Employee #6: "I believe they were, yes."**

Question: "Were they county employees?"

**Employee #6: "Yes."**

Question: "Who did you see working on the car?"

**Employee #6: "The Director himself. Probably (NAME REDACTED), probably helped."**

Question: "Did you see (REDACTED) working on the car?"

**Employee #6: "Yes. I saw him working on the tire. There was an issue with the tire. And (NAME REDACTED) was there. (ANOTHER NAME REDACTED). And (ANOTHER NAME REDACTED). They all attempted to help the Director break the brake loose on that car."**

Question: "(NAME REDACTED), (NAME REDACTED), (NAME REDACTED) are all county employees?"

**Employee #6: "Yes."**

Question: "Did you ever work on the car?"

**Employee #6: "Absolutely not. I wanted nothing to do with it."**

Question: "To the best of your knowledge, did the employees you stated, that worked on the car, were asked to work on the car by your Supervisor?"

**Employee #6: "I don't know if they were asked. I would think it was implied that they would."**

Question: "How often were employees working on the vehicle?"

**Employee #6: "Most everyday they would spend some time on it. From Christmastime to most recently when the car was gone."**

Question: "For approximately how long each day?"

**Employee #6: "The Director was working on it quite a bit himself. I was out of the office usually by 8:30, 8:45. I do know that when I came back, he was pretty much always working on it. When the other county employees were working on it, it was probably 45 minutes to an hour, at least."**

Question: "Have you ever expressed concern to your Supervisor regarding work being done on his private vehicle?"

**Employee #6: "Never."**

Question: "Specifically, did you ever witness the car having a locked tire, and seeing staff work on trying to break it free?"

**Employee #6: "Yes."**



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Comptroller's Office Question: "We have reports that county employees worked on this car during county time. Did you ever see people conducting work on this car?"

**Weights and Measures Employee #8: "Yes."**

Question: "On county time?"

**Employee #8: "Yes."**

Question: "Who asked other employees to perform work on this car during county time?"

**Employee #8: "I don't know anyone else who worked on the car other than the Director."**

Question: "How often was the Director or other employees working on the car?"

**Employee #8: "Very frequent. I didn't keep track. But it was frequent."**

Question: "Have you ever expressed concerns about the work being done on the car?"

**Employee #8: "I thought it wasn't really right. No I didn't."**

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Comptroller's Office Question: "We have reports that county employees worked on this car during county time. Have you ever seen anyone working on this car?"

**Weights and Measures Employee #9: "I think I stopped in once when I needed to talk to (NAMES DIRECTOR OF WEIGHTS AND MEASURES) and he was on his lunch, and that was it."**

Question: "And to clarify, he was working on the vehicle at the time?"

**Employee #9: "He was on his lunch. And he was working, nothing complicated, he was getting part numbers, so he can order, I guess."**

Question: "Have you ever worked on the car?"

**Employee #9: "Yeah. I helped him tinker with it a little bit after I was off work."**

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Comptroller's Office Question: "It has also been reported to us, and confirmed by some employees, that county employees have performed work on the car during county time. Can you explain why?"

**Weights and Measures Director: "No. If anyone did it, because the wheel was locked, we were having trouble. Never asked anyone to work on the car itself. If anyone worked on the car, they did so on their lunch hour and not at my direction. Everyone thought they had the solution to get the wheel free."**

Question: "Was there any work also performed on the wiring of the car?"

**Director: "Yes. I did the wiring."**

Question: "At the office?"

**Director: "At the office. On my lunch hour."**

As a result of our investigation, the Comptroller's Office can unequivocally state that the Director of Weights and Measures stored his personal vehicle on County property for a period of at least four months. Similar storage on a private lot paid for by the Director would have cost hundreds of dollars. In addition to this, the Director himself performed maintenance on the car while being stored in the Weights and Measures garage. Interviews with multiple staff members confirm many employees performed maintenance on his private car on multiple instances during the workday. The most egregious violation of the County Employee Handbook appears to be:

- B:9 – Performing personal business during County working hours;

And may include but are not limited to:

- A:4 – Violations of any Criminal Law or the commission of an offense which involves moral turpitude;
- A:8 – Deliberately restricting or interfering with the work performance by your department or work unit, or that performed by another person;
- B:8 – Personal Use of County Materials, tools, or equipment without proper permission;
- C:6 – Misuse of County time such as loitering in halls, restrooms, or cafeterias interfering with other employees' work routines, engaging in prolonged conversations which are not work related, etc.

**WE RECOMMEND** that the administration discipline the Director of Weights and Measures accordingly for storing a private vehicle for many months in a county garage where employees directly work, and for employees under his direction performing maintenance on a privately owned vehicle during the workday.

### 3) Smoking in the Weights and Measures Garage

During our interviews all ten employees verified and confirmed that they were aware that Erie County Personnel Policies and Procedures prohibit smoking inside of County buildings or within County vehicles.

Erie County Personnel Policies and Procedures Chapter X, Section 15

- 4) Smoking Prohibitions: All smoking by employees of Erie County is prohibited in any and all offices, buildings, vehicles and/or facilities owned, rented or leased by the County of Erie. There are no exceptions. This policy also applies to electronic cigarettes, which also are not permitted in office areas or inside office buildings, including those owned or leased by Erie County. (Employees found violating this policy are subject to disciplinary action).

- 5) Smoking Outdoors: B. Other County Locations: Employees who smoke outside of affected buildings may do so only during their normal break or lunch periods, and will do so no closer than ten (10) feet to the side of any point of entry or exit from the building.

Per the testimonies from the Weights and Measures staff, as well as a site visit by the Comptroller's office, we confirmed that the Weights and Measures garage contains between 50 and 150 gasoline samples for octane testing, as well as other flammable cleaning products, aerosol sprays, and machine lubricants. These materials are highly flammable and should never be subject to an open flame. In addition to the violation of county policy, this behavior endangers the welfare of those committing the violation as well as their co-workers and members of the public.

During our interviews several staff admitted to seeing the Director and others regularly smoking in the Weights and Measures garage.

Comptroller's Office Question: "Have you ever seen anyone smoking in the garage?"

**Weights and Measures Employee #1: "Yes."**

Question: "If so, who?"

**Employee #1: (NAMES THE DIRECTOR) and myself."**

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Comptroller's Office Question: "Have you ever seen anyone smoke in the garage or in a county vehicle?"

**Weights and Measures Employee #4: "Yeah. I got written up for smoking in a county vehicle. I don't smoke anymore. Yeah."**

Question: "So who have you seen smoking in the garage?"

**Employee #4: "I've seen myself, (NAMES THE DIRECTOR), (REDACTED NAME). I don't think anyone else smokes there. Yeah, that's it."**

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Comptroller's Office Question: "Have you ever seen anyone smoking in the county garage or in a county vehicle?"

**Weights and Measures Employee #5: "Yes."**

Question: "Who have you witnessed smoking on county property?"

**Employee #5: "I saw (NAMES THE DIRECTOR), (REDACTED NAME), and that's really it, I think, from a smoking standpoint."**

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Comptroller's Office Question: "Who have you seen smoking in the county garage or a county owned vehicle?"

**Weights and Measures Employee #6: "Inside the garage?"**

Question: "Inside the garage."

**Employee #6: "The Director (NAMES DIRECTOR OF WEIGHTS AND MEASURES). (REDACTED NAME). (ANOTHER REDACTED NAME) every once in awhile.**

Question: "Any other names?"

**Employee #6: "(ANOTHER REDACTED NAME). Those are the smokers in our office."**

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Comptroller's Office Question: "Have you ever seen anyone smoking in the county garage or a county vehicle?"

**Weights and Measures Employee #7: "Yes?"**

Question: "Who have you seen smoking in the garage?"

**Employee #7: "I've seen the Director smoking in the garage."**

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Comptroller's Office Question: "Which employees have you seen anyone smoking in the county garage?"

**Weights and Measures Employee #8: "(NAMES DIRECTOR OF WEIGHTS AND MEASURES) and (REDACTED NAME)."**

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Comptroller's Office Question: "Have you ever seen anyone smoking in the garage or on county property?"

**Weights and Measures Director: "Yes."**

QUESTION: "Who?"

**Director: "Me."**

Question: "Have you witnessed anyone else?"

**Director: "Yes."**

Question: "Can you list all the folks you've witnessed smoking on county property?"

**Director: "No, I will not."**

Question: "You will not?"

**Director: "No."**

Question: "As Director, were you aware that as they were smoking on county property that they were violating county policy?"

**Director: "Well."**

Question: "Yes or no."

**Director: "We don't have a smoking policy for that building."**

Question: "The county has a policy."

**Director: "And I'm aware of it. Yes."**

Question: "As Director, when you have witnessed people smoking on county property, have you ever provided any direction that they should not do that?"

**Director: "No I have not."**

Question: "And you participated with them?"

**Director: "Yes."**

Question: "Do you remain unwilling to state any other employee..."

**Director: "I would rather not. It's a disciplinary action. I'll talk with my union to see if I should give you that information."**

While the Director of the facility admitted to having smoked with staff in the garage; he refused to answer questions about other employees who did the same. The Director confirmed he was aware they were violating county policy and of the dangers associated with being in close proximity to flammable chemicals and materials, but he still participated with them, and confirmed he had never discouraged nor disciplined them from doing so.

One employee stated that they were disciplined for smoking. The employee stated that they were disciplined by the Deputy Director. This demonstrates inconsistencies within the department regarding the enforcement of county policy.

Two other Weights and Measures employees also admitted to having smoked in the garage with the Director on numerous occasions. Both of those employees acknowledged they were in violation of county policy.

As a result of our investigation, the Comptroller's Office can indisputably state that the Director knowingly allowed his staff to repeatedly violate county policy by smoking inside a County building in close proximity to flammable chemicals, and participated in the activity.

**WE RECOMMEND** that the Division of Weights and Measures become compliant with the existing county policy on smoking and not continue the course of selective enforcement.

**WE FURTHER RECOMMEND** that employees within the division, known to have violated the policy, be appropriately disciplined.

#### **4) Improper Inventory Tracking**

The initial Whistleblower claims received by the Comptroller's Office included potential theft of Inventory. Throughout the course of our investigation it was noted that due to poor record

keeping of inventory, and a lack of proper inventory lists, it was not possible to determine what may have been stolen versus what may have been lost, or divided for parts.

The inventory lists provided to the Comptroller's Office by Weights and Measures were dramatically different than those provided by New York State Department of Agriculture and Markets. When asked about it, the Weights and Measures Director explained that any item sent to New York State to be certified at any time is retained on that list. On an annual basis certain items come up to be re-certified, and at that time, if items are no longer in use, lost, stolen, or missing the State is informed to remove them from their list. However, in most cases this is not done, and the items remain on the State list.

For our review of inventory, the Comptroller's Office used both the State List as well as the Inventory Lists provided by W&M. During our review we noted the following:

- 1) Improper tracking of missing/stolen/lost equipment. At the time of our investigation, the Director explained that there had only been one report of anything being lost or stolen. This theft was in 2012, when a worker had a kit stolen from his truck. A report was filed with the Buffalo Police and an incident report was on file. Outside of this incident, no other reports had been filed, however during our interviews an employee admitted that he had misplaced part of his weight set and never reported it. According to W&M's records, since 2010, 35 items have been listed as missing, lost or stolen and filed with NYS. The lack of attention to detail on these lists is evidenced by our office having found 9 of those 35 during our investigation. The only items which had supporting documentation as to them being lost or stolen were those from the 2012 incident.
- 2) None of the inventory was locked up; all pieces were easily accessible to anyone with access to the building.
- 3) Nearly 40% of the items on the list from the State could not be found. All the kits listed on the W&M's list were found, however not all kits were complete. A considerable number of items were identified that didn't appear on any inventory lists.
- 4) A total of 33 items were found in the Weights and Measures Garage which were not on the State provided list of inventory.
- 5) Multiple weight kits are often pieced together to create complete kits, without tracking where the parts are coming from. The Director explained that some weight kits become incomplete because staff misplace or lose weights in the field. In those cases, they are replaced with weights from other kits which are already incomplete without documenting the transfer from one kit to another.
- 6) During the performance of this review, we noted numerous small weights the size of pencil erasers or smaller in piles on tables or in boxes which were clearly not properly

stored. The Director explained that the weight kits are extremely expensive, especially for the smaller more precise weights, and as such these items should be more properly cared for.

The overall inventory record keeping within W&M fails to account for all the equipment they have on hand. This opens up the department to potential theft. There is no formal policy for reporting items lost or stolen to management and there is no record of items which have been lost or stolen.

**WE RECOMMEND** that a formal policy is put in place in the Division of Weights and Measures which tracks all inventory. This policy should include procedures for equipment to be issued, a process for reporting any items which have been lost or stolen. All decommissioned or damaged items should be noted on a list for tracking purposes, and NYS should be provided an accurate list of certified equipment.

**WE FURTHER RECOMMEND** that obsolete items within W&M should be disposed of through the Department of Purchase's Division of Surplus. Many of these items carry financial value and could be sold at an upcoming county sponsored auction.

## ERIE COUNTY COMPTROLLER'S OFFICE

cc: Hon. Mark C. Poloncarz, Erie County Executive  
The Honorable Erie County Legislature  
Hon. Thomas DiNapoli, New York State Comptroller  
Hon. Andrew SanFilippo, Executive Deputy State Comptroller  
Mr. John Loffredo, Commissioner of Public Works  
Mr. Robert W. Keating, Director of Budget and Management  
Mr. Michael A. Siragusa, Erie County Attorney  
Erie County Fiscal Stability Authority